

Application Serial Number 10/506,287
Response to Office Action
Dated February 3, 2006

REMARKS / DISCUSSION OF ISSUES

Claims 1-8 and 10 are pending in the application upon entry of the present amendment. Claims 1 and 10 are the independent claims.

Objections to the Specification

Applicants note the objection to the Specification with regard to suggested headings. Applicants respectfully decline to provide such headings noting that these are not required in accordance with MPEP § 608.01(a).

Objection to Claim 9

The objection to claim 9 is moot in view of the present amendment.

Rejections Under 35 U.S.C. § 103

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of *Swanson, et al.* (U.S. Patent 5,889,567), *Weber, et al.* (U.S. Patent 6,025,897) and *Moon, et al.* (U.S. Patent 6,882,386). For at least the reasons set forth below, it is respectfully submitted that this rejection is improper and should be withdrawn.

Analysis of obviousness under 35 U.S.C. §103 requires determination of the scope and content of the prior art, the differences between the prior art, and the claims at issue, and the level of ordinary skill in the pertinent art.

W.L. Gore & Associates, Inc. v. Garlock, Inc. 220 USPQ 303, 311 (1983) (citing *Graham v. John Deere Co.*, 383 U.S. 1,

Application Serial Number 10/506,287
Response to Office Action
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17, 148 USPQ 459, 467 (CAFC 1966)). Moreover, there must have been something present in the teachings of the prior art to suggest to one skilled in the art that the claimed invention would have been obvious. *W.L. Gore & Associates* at 311 (citing *In re Bergel* 130 USPQ 206, 208 (CCPA 1961)); and *In re Sponnoble* 160 USPQ 237, 244 (CCPA 1969)).

Furthermore, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is a reason, suggestion or motivation do so. The reason, suggestion or motivation may come from references themselves; from knowledge of those skilled in art that certain references or disclosures in references are known to be of interest in the particular field; or from nature of the problem to be solved to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.* 37 USPQ2d 1626 (CAFC 1996). Moreover, prior knowledge in the field must be supported by tangible teachings of reference materials. *Cardiac Pacemakers Inc. v. St. Jude Medical Inc.* 72 USPQ 2d 1333, 1336 (CAFC 2004).

However, hindsight is never an appropriate motivation for combining references and/or the requisite knowledge available to one having ordinary skill in the art. To this end, relying upon hindsight knowledge of applicants' disclosure when the prior art does not teach nor suggest such knowledge results in the use of the invention as a template for its own reconstruction. This is wholly improper in the determination of patentability. *Sensonics*

Application Serial Number 10/506,287
Response to Office Action
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Inc. v Aerosonics Corp., 38 USPQ 2d 1551-1554 (CAFC 1996), citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303. Moreover, the determination of obviousness cannot be based on the hindsight combination of components selectively culled out from the prior art to fit the parameters of the claims at issue. *Crown Operations International Ltd. v. Solutia Inc.* 62 USPQ2d 1917, 1922 (CAFC 2002).

Claim 1 is drawn to a projection device and includes, *inter alia*, "...a transmissive LCD provided at the exit of said reflective polarizer for modulating the light transmitted by said polarizer, said LCD having an integrated reflective color filter array for reflecting light having the wrong color back into said integrator."

Claim 10 includes similar features.

As noted in the filed application, the reflective polarizer 35 and the color filter array 37 are useful in improving the efficiency of the device. (Kindly refer to page 4, lines 13-18 for support for the above assertion.)

The Office Action relies on *Swanson, et al.* for the disclosure of various components of claim 1. The Office Action then notes that *Swanson, et al.* lacks the disclosure of a reflective polarizer; and turns to *Weber, et al.* for the disclosure of this feature. Thereafter the Office Action notes that the *Weber, et al.* does not disclose a color filter array.

In combining *Weber, et al.*, the Office Action states 'Weber is evidence that ordinary workers in the art find reason, suggestion or motivation to employ a reflective polarizer between an LCD and an exit surface of an

Application Serial Number 10/506,287
Response to Office Action
Dated February 3, 2006

integrator.' In combining *Moon, et al.*, the Office Action states that 'Moon is evidence that ordinary workers in the art find reason, suggestion or motivation to employ a reflective color filter array in an LCD device.'

First, Applicants note that the reference to *Moon, et al.* discloses a cholesteric liquid crystal (CLS) color filter. The reference fails to disclose the colour filter array as specifically claimed.

Second, Applicants respectfully submit that the Examiner is attempting to cobble a rejection from a plurality of references stating certain benefits of the missing component found in the respective reference, seemingly as the motivation to combine the references. For example, the Office Action notes that *Moon, et al.* employs a CLC filter to improve luminance. While this may be the case, Applicants respectfully submit that the Office Action is merely proffering a hindsight combination of components selectively culled out from the prior art to fit the parameters of the claims at issue. To wit, Applicants respectfully submit that the Office Action dissects the elements of claims 1 and 10 in order to provide a template from which the claims can be reconstructed; and then fits the various elements into their respective locations within the template. As noted above, this is improper in the determination of patentability.

Therefore, it is respectfully submitted that a *prima facie* case of obviousness has not been properly made. Thus claims 1 and 10 are patentable over the applied art. Furthermore, claims 2-8, which depend from claim 1, are

Application Serial Number 10/506,287
Response to Office Action
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also patentable over the applied art at least because of their dependence on claim 1.

Conclusion

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
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